

FILED

APR 10 2019

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

1 BOTTINI & BOTTINI, INC.
2 Francis A. Bottini, Jr. (SBN 175783)
3 Albert Y. Chang (SBN 296065)
4 Yury A. Kolesnikov (SBN 271173)
5 7817 Ivanhoe Avenue, Suite 102
6 La Jolla, California 92037
7 Telephone: (858) 914-2001
8 Facsimile: (858) 914-2002
9 Email: fbottini@bottinilaw.com
10 achang@bottinilaw.com
11 vkolesnikov@bottinilaw.com

7 | Counsel for Plaintiff Rick Bowlinger
8 | in Bowlinger v. Chew, No. CGC-18-
572326 (Cal. Super. Ct. Cnty. of S.F.)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

| | | |
|----|--|--|
| 12 | <i>In re:</i> | Bankruptcy Case No. 19-30088 (DM) |
| 13 | PG&E CORPORATION, | Chapter 11 |
| | - and - | (Lead Case) |
| 14 | PACIFIC GAS AND ELECTRIC | (Jointly Administered) |
| 15 | COMPANY, | |
| 16 | | Debtors. |
| 17 | <ul style="list-style-type: none">○ Affects PG&E Corporation○ Affects Pacific Gas and Electric Company● Affects Both Debtors | Declaration of Francis A. Bottini, Jr. in Support of Plaintiff Rick Bowlinger and Bottini & Bottini, Inc.'s Opposition to the Debtors' Motion to Enforce the Automatic Stay Pursuant to 11 U.S.C. § 362(a)(3) |
| 18 | | Date: April 24, 2019 |
| 19 | | Time: 9:30 a.m. |
| 20 | <i>*All papers shall be filed in the Lead Case, No. 19-30088 (DM).</i> | Place: United States Bankruptcy Court Courtroom 17, 16th Floor San Francisco, California 94102 |

1 I, Francis A. Bottini, Jr. declare as follows:

2 1. I am an attorney with Bottini & Bottini, Inc., counsel for plaintiff Rick
3 Bowlinger in a shareholder derivative action brought on behalf of nominal defendants
4 PG&E Corporation and Pacific Gas and Electric Company (collectively, the "Utility"
5 or the "Debtors") in the Superior Court of California, County of San Francisco (the
6 "State Court"), captioned *Bowlinger v. Chew*, No. CGC-18-572326 (the "Derivative
7 Action"). I submit this declaration in support of Mr. Bowlinger and my firm's
8 opposition to the Debtors' March 14, 2019 Motion to Enforce the Automatic Stay
9 Against Rick Bowlinger and Bottini & Bottini, Inc. Pursuant to 11 U.S.C. § 362(a)(3)
10 (the "Stay Motion"). I have personal knowledge of the facts stated in this declaration.
11 I could and would competently testify to these facts, if called upon to do so.

12 2. On December 24, 2018, Mr. Bowlinger filed a shareholder derivative
13 complaint against certain current and former directors and officers of the Utility (the
14 "Individual Defendants"), alleging common-law claims for breach of fiduciary duty,
15 abuse of control, corporate waste, and unjust enrichment, arising from their failure to
16 implement safety measures and to address safety deficiencies relating to the Utility's
17 power lines and transmission pipelines. All of the Individual Defendants named in
18 the Derivative Action are non-debtors and are sued in their individual capacity. The
19 Debtors are named only as nominal defendants because the Derivative Action is
20 brought for the Debtors' benefit.

21 3. On December 24, 2018, the State Court set a case management
22 conference for May 29, 2019.

23 4. On February 1, 2019, the Utility filed a form entitled Notice of Stay of
24 Proceedings (the "Notice") in the State Court based on the Utility's bankruptcy
25 petition in this Court.

26 5. On February 5, 2019, Mr. Bowlinger filed a response to the Utility's
27 Notice, stating that the automatic stay under 11 U.S.C. § 362(a) applies only to the

1 Utility (as debtors) and does not extend to the non-debtor Individual Defendants.

2 6. On February 8, 2019, the State Court issued an order cancelling the May
3 29, 2019 case management conference and setting a case management conference for
4 March 21, 2019. Mr. Bowlinger did not request the case management conference. The
5 State Court also ordered the parties to file a joint case management statement three
6 court days in advance of the case management conference — by March 18, 2019.

7 7. On March 7, 2019, I spoke with an attorney from Weil, Gotshal &
8 Manges LLP, the Debtors' bankruptcy counsel. During the call, I stated that Mr.
9 Bowlinger believed that (a) the automatic stay under 11 U.S.C. § 362(a) is
10 inapplicable to the non-debtor Individual Defendants; and (b) if the Debtors wished to
11 extend the automatic stay to any non-debtor defendants, the Debtors should make a
12 motion in this Court for such relief.

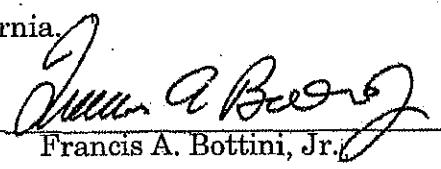
13 8. On March 15, 2019, my firm was served with a copy of the Debtors' Stay
14 Motion filed in this Court on the previous day.

15 9. On March 18, 2019, an attorney from my firm conferred by telephone
16 with the attorneys at Latham & Watkins LLP, counsel for the Utility in the
17 Derivative Action in State Court, regarding the impending case management
18 conference. My firm and the Utility's counsel agreed that, in light of the pending Stay
19 Motion in this Court, the case management conference scheduled for March 21, 2019
20 should be continued pending this Court's resolution of the Stay Motion.

21 10. On March 18, 2019, Mr. Bowlinger and the Utility filed a joint case
22 management statement reflecting their agreement with respect to continuing the
23 impending case management conference. A true and correct copy of this joint case
24 management statement is attached as **Exhibit 1**.

25 11. Aside from the foregoing, my firm has not taken any action, since
26 February 1, 2019, in furtherance of the prosecution of Mr. Bowlinger's Derivative
27 Action in State Court.

1 I declare under penalty of perjury that the foregoing is true and correct.
2 Executed on April 10, 2019, at Los Angeles, California.

3 
4 Francis A. Bottini, Jr.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 3 -

EXHIBIT 1

EXHIBIT 1

1 LATHAM & WATKINS LLP
2 Robert W. Perrin (Bar No. 194485)
3 *robert.perrin@lw.com*
4 Michael J. Reiss (Bar No. 275021)
5 *michael.reiss@lw.com*
6 355 South Grand Avenue, Suite 100
7 Los Angeles, California 90071-1560
8 Telephone: (213) 485-1234
9 Facsimile: (213) 891-8763

10 LATHAM & WATKINS LLP
11 James E. Brandt (*pro hac vice* forthcoming)
12 *james.brandt@lw.com*
13 885 Third Avenue
14 New York, New York 10022-4834
15 Telephone: (212) 906-1200
16 Facsimile: (212) 751-4864

17 *Attorneys for Nominal Defendants PG&E
18 Corporation and Pacific Gas and Electric Company*

19 [Additional Counsel appear on signature page.]

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE COUNTY OF SAN FRANCISCO**

22 RICK BOWLINGER, derivatively on behalf of
23 PG&E Corporation and Pacific Gas and
24 Electric Company,

25 Plaintiff,

26 v.

27 LEWIS CHEW; RICHARD C. KELLY; FRED
28 J. FOWLER; ROGER H. KIMMEL;
29 RICHARD A. MESERVE; FORREST E.
30 MILLER; BENITO MINICUCCI; ERIC D.
31 MULLINS; ROSENDO G. PARRA;
32 BARBARA L. RAMBO; ANNE SHEN
33 SMITH; GEISHA J. WILLIAMS; ANTHONY
34 F. EARLEY, JR.; JASON P. WELLS;
35 PATRICK M. HOGAN; JULIE M. KANE;
36 DINYAR B. MISTRY; DAVID S.
37 THOMASON; MARYELLEN C.
38 HERRINGER; JEH C. JOHNSON;
39 NICKOLAS STAVROPOULOS;
40 CHRISTOPHER P. JOHNS; BARRY
41 LAWSON WILLIAMS; and DOES 1 through
42 50, inclusive,

43 Defendants,

44 and

45 PG&E CORPORATION and PACIFIC GAS
46 AND ELECTRIC COMPANY,
47 Nominal Defendants.

48 Case No. CGC-18-572326

49 **JOINT CASE MANAGEMENT
50 STATEMENT**

51 Judge: Hon. Anne-Christine Massullo
52 Dept.: 304

53 Trial Date: None set
54 Complaint filed: December 24, 2018

1 Plaintiff Rick Bowlinger (“Plaintiff”) and Nominal Defendants PG&E Corporation and
2 Pacific Gas and Electric Company (collectively “PG&E”)¹ jointly submit this case
3 management statement as follows:

4 1. On December 24, 2018, Plaintiff filed a shareholder derivative complaint on behalf
5 of PG&E against the Individual Defendants, who are PG&E’s current and former officers and
6 directors, alleging claims under California law for breach of fiduciary duty, abuse of control,
7 corporate waste, and unjust enrichment.

8 2. On January 29, 2019, PG&E Corporation and Pacific Gas and Electric Company,
9 as debtors and debtors-in-possession, each filed a voluntary petition for bankruptcy under Chapter
10 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern
11 District of California (the “Bankruptcy Court”), captioned *In re PG&E Corporation*, Lead Case
12 No. 3:19-bk-30088 (DM) (Bankr. N.D. Cal.).

13 3. On February 1, 2019, PG&E filed the Notice of Stay of Proceedings (the “Notice”),
14 attaching PG&E’s bankruptcy petitions.

15 4. On February 5, 2019, Plaintiff responded to PG&E’s Notice, and argued that the
16 stay under Section 362 of the Bankruptcy Code applies only to PG&E and does not automatically
17 extend to the Individual Defendants, who are not debtors in the Bankruptcy Court.

18 5. On March 14, 2019, PG&E moved in the Bankruptcy Court for an order applying
19 the automatic stay to the Individual Defendants in this action (the “Motion to Enforce the
20 Automatic Stay”). A hearing on the Motion to Enforce the Automatic Stay has been set for April
21 24, 2019.

22 6. In light of the pending Motion to Enforce the Automatic Stay and the April 24,
23 2019 hearing in the Bankruptcy Court, the parties agree that the case management conference
24

25
26 1 The “Individual Defendants” named in the complaint include: Lewis Chew, Richard C.
27 Kelly, Richard A. Meserve, Benito Minicucci, Rosendo G. Parra, Anne Shen Smith, Fred J.
28 Fowler, Roger H. Kimmel, Forrest E. Miller, Eric D. Mullins, Barbara L. Rambo, Geisha J.
Williams, Anthony F. Early Jr., Jason P. Wells, Patrick M. Hogan, Julie M. Kane, Dinyar B.
Mistry, David S. Thomason, Maryellen C. Herringier, Jeh C. Johnson, Nickolas Stavropoulos,
Christopher P. Johns, and Barry Lawson Williams.

1 scheduled for March 21, 2019 in this Court should be continued pending the Bankruptcy Court's
2 ruling on the Motion to Enforce the Automatic Stay.

3
4 Dated: March 18, 2019
5

LATHAM & WATKINS LLP
ROBERT W. PERRIN (194485)
MICHAEL J. REISS (275021)

6 By /s/ Robert W. Perrin
7 ROBERT W. PERRIN

8 355 South Grand Avenue, Suite 100
9 Los Angeles, CA 90071
10 Telephone: (213) 485-1234
Facsimile: (213) 891-8763
11 robert.perrin@lw.com
michael.reiss@lw.com

12 LATHAM & WATKINS LLP
13 JAMES E. BRANDT (*pro hac vice* forthcoming)
14 885 Third Avenue
15 New York, NY 10022
Telephone: (212) 906-1200
Facsimile: (212) 751-4864
james.brandt@lw.com

16 *Attorneys for Nominal Defendants PG&E*
17 *Corporation and Pacific Gas and Electric*
18 *Company*

19 Dated: March 18, 2019
20

BOTTINI & BOTTINI, INC.
FRANCIS A. BOTTINI, JR. (175783)
ALBERT Y. CHANG (296065)
YURY A. KOLESNIKOV (271173)

21 By /s/ Francis A. Bottini, Jr.
22 FRANCIS A. BOTTINI, JR.

23 7817 Ivanhoe Avenue, Suite 102
24 La Jolla, CA 92037
Telephone: (858) 914-2001
Facsimile: (858) 914-2002
fbottini@bottinilaw.com
achang@bottinilaw.com
ykolesnikov@bottinilaw.com

25
26
27
28 *Attorneys for Plaintiff Rick Bowlinger*